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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. [redacted] 65

LATVIAN STATE CARGO AND PASSENGER STEAMSHIP LINE,

Petitioner,

against

J. HOWARD McGRATH, Attorney General of the United States and Successor to the Alien Property Custodian,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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[illegible]
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Latvian State Cargo and Passenger Steamship Line prays for a Writ of Certiorari to review a decision and judgment of the United States Court of Appeals for the District of Columbia Circuit entered February 23, 1951, affirming a judgment of the United States District Court for the District of Columbia granting a motion of defendant, before answer, for summary judgment and entering judgment for defendant (Rec. pp. 66, 60).

Opinions Below

The opinion of the Court below (by Prettyman, C. J., Miller, C. J., joining and Stephens, Chief Judge, concurring without opinion) is set forth in the record (pp. 62-65)

but is as yet unreported. The opinion of the District Court (Pine, J.) is set forth at pages 56-59 of the record and is reported at 80 F. Supp. 683.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered February 23, 1951 (R. 66). The jurisdiction of this court is invoked under the provisions of Section 1254(1) of Title 28, United States Code.

Questions Presented

1. Must a federal court regard non-recognition by the United States of a foreign sovereign as an expression of determinative policy which prevents any consideration of the merits of a claim based on the law of the unrecognized government, even though such law would be otherwise effective under the normal rules applicable under the conflict of laws principles generally accepted and applied in the United States.

2. Where a controversy exists between foreign nationals, as to a claim of title to property vested by the Attorney General's predecessor, and the United States is a mere stakeholder, may a federal court, because of non-recognition of a government conceded to exist in fact, decline to consider the relative merits of the foreign claims asserted, and thereby deprive one of the claimants of a right to litigate which it would have had but for the vesting.

Statutes Involved

The present action is one under Section 9(a) of the Trading With The Enemy Act, 50 U. S. C. App. § 9(a). The decision of the court below is claimed by petitioner to be incompatible with U. S. Const. Art. III, Sections 1, 2.

Statement

Petitioner is a corporation of the Union of Soviet Socialist Republics, a foreign, friendly sovereign (R. 2). At a time prior to the date of the vesting orders of the Alien Property Custodian which led to this action, and subsequent to the establishment in 1940 of the (unrecognized) Latvian Soviet Socialist Republic, petitioner became engaged in litigation with certain other alien nationals, involving their conflicting claims of ownership to three Latvian vessels (R. 27-8). Petitioner's claim was based on a transfer which was in turn based on acquisition of title to the vessels by "nationalization upon compensation" by the unrecognized regime (R. 54). The adverse claims were in behalf of alleged former owners of either the vessels, or an interest in a nationalized entity which had owned them (cf. R. 36, 52 with R. 38).

Two of the vessels involved were on the high seas at or shortly after promulgation of the second nationalization decree (R. 45); the third was in drydock in Brooklyn (id.) but may have been on the high seas at the time of the first decree, and undoubtedly was some time after the second (R. 29). The vessels had, after their arrival in American waters, been taken hold of in litigation arising from the conflicting claims by the United States District Courts for the Southern and Eastern Districts of New York. These courts (per Knox, C. J. and Galston, D. J., respectively), had thereupon appointed petitioner's agent, Charles Recht, and another, as trustees for the conservation and operation of the vessels, pending adjudication of the conflicting claims (R. 27-8). Thereafter, in the Eastern District, the attempt of one Bilmanis (then recognized as Latvian Minister) to intervene in the proceeding was rejected because of laches, and the German nationality of the former owner he purported to represent (*The Regent,* 47 F. Supp. 995). The opinion which denied status to Bilmanis discloses the orderly procedure for adjudicating the conflicting claims which was being pursued; and that the particular ship in-

volved had been sunk, and the trustees directed to hold the insurance fund intact (id.). By June, 1942, all three ships had been sunk by enemy action (R. 34).

Thereafter, on a recital of enemy interest, the Alien Property Custodian made orders vesting the interests of the trustees, in each of the funds representing the sunken ships (8 F. R. 11304, 12831). The vesting orders, at the insistence of the Custodian, made "moot" the judicial proceedings then pending (Petition of John F. X. McGohey, April 29, 1946, in Ad. 122-40, S. D. N. Y.). The Attorney General—successor to the Custodian—subsequently determined to treat separately the conflicting claims of petitioner and its former opponents in the New York Federal Court proceedings; on disallowance by his subordinates of this petitioner's claim, the present action was begun.

The court below has affirmed an order granting summary judgment for respondent. The motion for summary judgment was made before answer. It was granted by the District Court on the ground—not expressly adopted by the court below—that "a court may not give effect to an act of an unrecognized government" (R. 57). But the court below felt obliged nevertheless to affirm. Despite its finding that "the nationalization decrees were restored to effect" when the Nazis were expelled from Latvia (R. 63) and that "the results which would normally be reached under the rules governing conflicts of laws" might involve application of such decrees to the ships claimed by petitioner, the court yielded to respondent's contention which it summarized:

> "When the executive branch of the Government has determined upon a foreign policy which can be and is ascertained, and the non-recognition of specific foreign decrees is deliberate and is shown to be part of that policy, such non-recognition must be given effect by the courts" (R. 65).

Specification of Errors to be Urged

1. The Court of Appeals erred in deeming itself obliged to subordinate itself to executive control and to reject "the usual rules applicable under the established doctrines of conflicts of laws", on the record herein, and the decision reached is not required or justified by *United States* v. *Pink*, 315 U. S. 203.

2. The Court of Appeals erred in regarding the Executive Branch as endowed with competence to express effective "non-recognition of specific foreign decrees".

3. The Court of Appeals erred in allowing the Custodian's successor—on a record in which the sole interest of the United States is as a stakeholder—to deprive the petitioner of a trial or judicial hearing at which the merits of its claim adverse to other foreign nationals could be examined.

4. The Court of Appeals erred in depriving petitioner of judicial examination of the propriety of the taking of its property by the Alien Property Custodian.

Reasons for Granting the Writ

The Court of Appeals has decided questions of general importance which have not been, but should be settled by this court; in so doing the court has given improper effect to a decision of this Court (*United States* v. *Pink*, 315 U. S. 203) and has failed to give proper effect to an applicable decision of this court (*United States* v. *Belmont*, 301 U. S. 324). Moreover, the result reached raises a substantial question as to the construction and application of Article III, Sections 1 and 2 of the Federal Constitution.

The case presents important issues of federal law which have been and will be frequently litigated,* and in respect of which not only federal but state courts look to this Court

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* Chinese cases have already begun to appear, e.g.: *Bank of China* v. *Wells Fargo*, 92 F. Supp. 920 (N. D. Cal.); *Rep. of China* v. *American Exp. Co.*, 95 F. Supp. 740 (S. D. N. Y.); *Chase Nat. Bank* v. *Directorate, etc. Bank*, 95 F. Supp. 733 (S. D. N. Y.)

for guidance. Litigation involving the effect of acts of unrecognized governments necessarily follows in the wake of employment by the Executive Branch of the policy of non-recognition of *de facto* administrations of undoubted stability. No court has competence to review or examine the merits of such policy; but, we submit, the court below was in error in subordinating the determination of a purely judicial question to what it must have considered was required by the exigencies of such policy. This court's power of supervision is called for because of the importance of clear delimitation between the area of judicial determination, and the area of executive supremacy, as previously understood to exist, under the decisions of this and other courts of last resort.

The court below did not find its path an easy one. It is not often that a United States Court of Appeals holds a case, on a record as slender as this, for a year and two days between argument and decision.[1] Its difficulty was not lessened by the Attorney General's attempt to establish the doctrine that an expression by a member of the Executive Branch on "legality" of a foreign law will "constitute a determination * * * of a political question in the field of foreign policy which is binding on the courts" (Gov't Br. C. C. A. 14). The New York Court of Appeals —early in the history of these attempts—was puzzled and skeptical as to how "by 'formulation' of its public policy as to the effect of the decree" the Department of State "could change the judicial question determined by the court below into a 'political question' which the courts are not empowered to decide." *Anderson* v. *N. V. Transandine*, 289 N. Y. 9, 20. The Attorney General has persisted nevertheless, and succeeded below.

It has been authoritatively written of this Court that

> "This tribunal is the ultimate organ * * * for adjusting the relationship * * * of the three departments of government to one another."

[1] Even so, the opinion writer displayed confusion in, for example, regarding *The Navemar* (303 U. S. 68) as a case where "the State Department refused to certify a policy of hostility to decrees of the unrecognized governments" (R. 64).

> Frankfurter, Law and Politics 21 (XIV Encyc. Soc. Sci. 424).

Such adjustment is called for here. A parallel question merited certiorari,[2] but escaped decision, in *U. S. ex rel. Touhy* v. *Ragen,* 340 U. S. 462, 95 L. Ed. 345. Whether a court might be ousted from inquiring into what was ordinarily a judicial question presented a question of constitutionality which *Touhy* deferred to a factual situation requiring a ruling.

The court said in *Marbury* v. *Madison,* 1 Cranch 137, 167:

> "The question whether a right has vested or not, is, in its nature, judicial, and must be tried by the judicial authority."

But, said the court below, "non-recognition of specific foreign decrees" by the Executive Branch "must be given effect by the courts" "regardless of the results which would normally be reached under the rules governing conflicts of laws" (R. 65). This, despite the notice taken by the court, that

> "Germany having been defeated and Latvia having been reoccupied by the Union of Soviet Socialist Republics, the Latvian Soviet Socialist Republic was reestablished and the nationalization decrees were restored to effect" (R. 63).

1. The case presents the important question as to whether, even if the Executive were competent to "recognize" the "legality" of a foreign decree, such "recognition"—or "non-recognition", as certified in this case, is *binding and conclusive* on this or any other court of the United States.

In broad, the question of the asserted effect of a foreign decree upon the facts before an American court, will

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[2] At p. 348 of 95 L. Ed. adv. op.: "Among the questions duly presented by the petition for certiorari was whether it is permissible for the Attorney General to make a conclusive determination not to produce records", 340 U. S. at p. 467.

usually depend on proof of its promulgation; its interpretation; and "jurisdiction"—"the power of a state to create interests which under the principles of the common law will be recognized as valid in another state" (Restatement, Conflict of Laws, § 42). It had not been considered, or seriously contended, prior to the *Pink* case, *supra,* that these were other than judicial questions nor did that case decide anything to the contrary. It had been held, in a case where, unlike the present one, the United States had a proprietary interest, that "the validity of the title acquired (under foreign law) is subject to judicial inquiry"; that while the

> "courts will leave for the Executive the determination of all 'political' issues; in the international field this means such matters as the recognition of new governments or the making of treaties, not the direct determination of questions of property"

and that

> "A broader interpretation of 'political questions' is unnecessary to the effective conduct of diplomatic relations with other countries and is undesirable as subjecting issues of private property to the changing circumstances of international politics beyond what is inevitable in any event."
>
> Clark, C. J., in *Banco de Espana* v. *Federal Res. Bank of N. Y.,* 114 F. (2d) 438, 442.

That a question as to non-recognition of a government might be involved does not of itself affect the scope of the judicial function in giving consideration to what might be the appropriate effect of foreign law, in a particular case. The Department of State expressed itself on this point, in no uncertain terms, in a communication of record [3] in *M. Salimoff and Co.* v. *Standard Oil Co.,* 262 N. Y. 220.

> "The question as to the validity of acts and decrees of an unrecognized regime would appear to be a matter to be decided by the courts in an appropriate case."

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[3] Letter to counsel, of January 26, 1932, printed at p. 13, Brief of Respondent.

And the Department's acknowledgment of the limit of Executive competence was adopted—without crediting the source—in Chief Judge Pound's opinion (at p. 224).

Did the *Pink* case require an abatement of the judicial function, when non-recognition exists? Did this Court either by decision there, or its expressions on the issues, instil into non-recognition a vitality which must be taken to check and reverse the trend of jurisprudence to minimize the significance of non-recognition, in cases not involving the issues previously thought to be directly determined by recognition? Two judges of the court below thought so (Stephens, C. J., concurring only in the result); two judges of the Court of Appeals for the Third Circuit thought so, in *The Maret*, 145 F. (2d) 431 (Goodrich, C. J., rejecting their reasoning on this point.)[4]

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[4] The Third Circuit in *The Maret*, reached a result which cannot be reconciled with its own earlier decision in *The Denny*, 127 F. (2d), 404, 410, where the court said:

> "Finally it is argued that since the government of the Lithuanian Soviet Socialist Republic and its admission to the Union of Soviet Socialist Republics have not been recognized by our government this court may not, by permitting Recht to act under the powers of attorney given to him, recognize or give effect to the decrees of the Soviet Socialist Republic which reorganized Lietukis and nationalized Baltic Lloyd. But these are both Lithuanian associations and the parties in interest, so far as here appears, are all citizens of Lithuania and domiciled therein. The rights of American citizens or residents are not involved. We may not ignore the fact that the Soviet Socialist government did actually exercise governmental authority in Lithuania at the time the decrees in question were made and the powers of attorney were given, but must treat its acts within its own territory as valid and binding upon its nationals domiciled therein. It follows that the respondents may not question in this court the validity of the Lithuanian decrees insofar as concerns their effect upon the interests of the former members of the associations therein or the validity of the powers of attorney executed by the associations' officers and offered in this proceeding."

Judge Goodrich, concurring in *The Maret*, on the grounds themselves at variance with the unanimous decision of the Second Circuit in *The Navemar*, 102 F. (2d) 444, dissociated himself from his colleagues' decision which imported an "affirmative" effect, never before supposed to exist, into non-recognition.

We submit that *Pink* is warped beyond recognition in *The Maret* and the decision below; that it is in the interest of sound administration of justice that the misapprehension as to the scope and meaning of *Pink* be now corrected by this Court. *If, since* Pink, *it is no longer correct to say*:

> "[The State Department] cannot determine how far the private rights and obligations of individuals are affected by acts of a body not sovereign or with which our government will have no dealings. That question does not concern our foreign relations. It is not a political question but a judicial question." [5]

Or say:

> "(Executive) action in recognizing a foreign government * * * is conclusive on all domestic courts which are bound to accept its determination, *although they are free to draw for themselves its legal consequences in litigation pending before them.*" [6]

the revision involved should be expressed directly by this court, and not left to dubious implications.

Pink, of course, dealt not with non-recognition and its consequences; moreover, it did not deal with the effect of recognition itself, *as such.* It dealt rather (in respect of the portion of the opinion here material) with the power of the President to prescribe a rule of distribution—a "globular * * * regrouping of assets" which would exclude foreign creditors of nationalized Russian corporations, in favor of American nationals, having claims against the Soviets, *which had theretofore been an obstacle to friendly relations and hence to recognition.* The power thus considered, being held to exist as an incident to recognition, was sufficient to overcome the local interest of New York in prescribing a different rule of distribution, as to assets within its territorial jurisdiction. The only decision of the Executive held to be "final and conclusive" on the

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[5] *Russian Reinsurance Co.* v. *Stoddard,* 240 N. Y. 149, 158.

[6] *Guaranty Trust Co.* v. *United States,* 304 U. S. 126, 138 (emph. supp.).

courts was the judgment of the President that "full recognition of the Soviet Government required the settlement of all outstanding problems including the claims of our nationals"—thus upholding the rule of distribution he had prescribed.

Thwarted, if the decision below in *Pink* had been upheld, would have been the purpose of the President to remove the obstacles to recognition, in the exercise of his constitutional prerogative to make an Executive Agreement.

No policy or purpose of the Executive could be thwarted by decision of the present case in accordance with the "usual rules applicable under the established doctrines of conflicts of laws". Title to property would be determined; but no tangible "comfort" to the unrecognized regime would be given; the Executive has already seen to that. By exercise of its undoubted power to establish "freezing controls", the Executive Branch may withhold the fruits of this action from petitioner—even though it be a corporation of a recognized regime—until it is deemed compatible with the interests of the United States that defrost be permitted.[7] In *Pink*, on the other hand, no remedy was available, except by judgment for the United States, to give effect to the Presidential policy to prefer American nationals over foreign claimants. And even *Pink* did not decide that the claims of the foreign creditors of the nationalized corporations were without merit, *or were to be weighed by rules of law promulgated by the Executive.* The foreign claims were merely excluded from participation in a distribution here.

Indeed, the court below has seemingly been persuaded by argument based, not on the record, but on "considerations on which [the foreign policy adopted by the Executive] is based and the consistency and vigor with which it has been pursued from 1940 to the present" (Gov. Br., C. C. A., p. 5 and compare Br., pp. 5-11 with opinion N. 12,

[7] See Executive Order 8484, lifted by General License No. 94 (10 F. R. 14814) only as to Latvian assets acquired after December 7, 1945.

R. 65). We do not see how it can be material for the court to evaluate "considerations" on which a policy is based, or its "consistency and vigor", unless it be invited to approve the policy. That is certainly forbidden by *Pink* and a long line of predecessors! If "objections to the underlying policy are to be addressed to the political department and not to the courts" (315 U. S. at p. 229) it is pretty obvious that praise of the policy, or rationalization in its behalf belongs in some other forum. As Judge (now Chief Judge) Learned Hand said in *The Florence H*, 248 Fed. 1012, 1017:

> "A court, which is not authorized to treat in any fashion with foreign powers, should be in consequence quite inaccessible to any suggestion which is based upon international considerations."

It is not for the Attorney General to defend, not for us to criticize, not for the court to weigh, the propriety of continued non-recognition of the decade-old regimes in the Baltic republics. If the consequences of non-recognition would not defeat petitioner's claim under the "usual rules applicable under the established doctrines of conflicts of laws", then why should it matter that the policy is deemed a "good" one? No more than, if petitioner's claim were without merit, it would be helped if the policy of non-recognition is a "bad" one.

2. Apart from the "conclusiveness" of non-recognition of a regime, the case presents for examination for the first time, in this court, an asserted competence of the Executive to recognize the "legality" of "laws and decrees" of a foreign, unrecognized government. A "certificate" appears in the record—quoted in full by the court (R. 64)—that "the legality of the so-called 'nationalization' laws and decrees, or any of the acts of the Soviet regime which assumed power in Latvia" "has not been recognized by the Government of the United States". The suit of the petitioner is rejected because the "control of the executive branch over foreign affairs must necessarily" be broad

enough to include "non-recognition of specific foreign decrees" (R. 65).

The certificate quoted is curious, though not entirely unprecedented. The recent practice of employment of such a certificate warrants consideration by this Court of the claimed meaning of such a certificate, the claimed source of the power under which it is promulgated; and the compatibility of such claimed power with Article III, Sections 1 and 2 of our Constitution.

The importance of the question is enhanced by the societal implications of the purported exercise of the power: [8] the consequence of establishing, as a "judicial vacuum" the area governed by a regime conceded below to have "effective administrative and governmental control within Latvian territory" (Gov't br., C. C. A., p. 43). There is, moreover, no "government-in-exile" recognized or otherwise, no other source that may be looked to as to what is the law of Latvia, governing the relations of its inhabitants.

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[8] When organized social control exists in another country, it is incompatible with the classic view of conflict of laws to "posit the legal non-existence of non-recognized communities". Whether or not the sovereign is recognized is beside the point.

> "Indeed the essential thing is just this organized social control rather than the mystical essence called sovereignty. The function of a conflict of laws is to coordinate the many spheres of social control, to assign to each the objects best suited to be controlled by it, and by the same principle to exclude others. It is a broad application of the principle of the division of labor. To apply the law of another state is not to do that state a favor or to grant it a privilege because we approve of it or have welcomed it into our exclusive coterie; it is to recognize the universal need for order and predictability, to realize that in a given portion of the globe the privilege and obligation of maintaining that order is committed to one organization and not to some other, to appreciate that the maintenance of that order must be 'respected' to a certain extent if it is to fulfill its function. We may not like that order, but to ignore it or suppose that some other exists is to produce an entirely useless anarchy and confusion."

See *Jaffe, Judicial Aspects of Foreign Relations* 166-7, 236.

The asserted jurisdiction of an executive official to grant or withhold recognition to a law or decree will neither find support in authority nor withstand analysis. If "no executive department of the government is constitutionally or practically equipped" (even in a case touching on foreign affairs) to pass upon "present rights to property within a court's jurisdiction" (*Sullivan* v. *Sao Paolo,* 122 F. (2d) 355, 358) is such department equipped to pass upon a crucial judicial ingredient in such determination?

The Secretary of State did not think so, as recently as the *Salimoff* case, see supra, p. 8, referring to communications to counsel in that case.

Professor [now Ambassador-at-large] Jessup did not think so. In commenting on the *Anderson* case, *supra,* he said of the "suggestion of interest" filed by the Attorney General:

> "In that suggestion, the State Department in effect undertook to tell the court how it should determine certain questions of law, *but the New York Court of Appeals properly reached its own conclusion as to the legal rules applicable*" (40 A.J.I.L. p. 171).

No authority was cited below to support the asserted power of the Executive Branch to "recognize" the legality of a foreign decree. In a proper case, the force of a foreign decree may be affected by recognition of the enacting government. What function is exercised however, when "legality" of the decree itself is "recognized"? What effect is it claimed to have, and by virtue of what constitutional principle—or implication from what constitutional power?[9] Does the power to "recognize" "legality" of a decree embrace the lesser power to construe? May a de-

[9] The question here is not as to the "public policy" that may be involved in enforcement of the Latvian decree, or as to whether there is even room, on the facts, for the operation of the so-called "public policy exception".

The court below disclaimed to pass on "public policy", and so itself did not presume to hold, in opposition to this Court's decision in *United States* v. *Belmont, supra,* that *any* public policy of the United States could be involved in a controversy between aliens, in which no American national has a recognizable interest.

cree of a recognized government be denied "recognition" as to "legality" by the Secretary, acting in the exercise of the newly-found power?

It has been thought ever since *Marbury* v. *Madison*, 1 Cranch at pages 177-8 that: "It is emphatically the province and duty of the judicial department to say what the law is * * * this is the very essence of judicial duty." It seems plain to us that judicial power cannot be assumed so easily by a member of the Executive Branch—merely because a decree of a foreign regime is involved.

> "If the courts may not presume to intrude on governmental functions and to determine the exact nature and extent of diplomatic relations, so likewise the diplomat may not properly intrude upon and attempt to determine the nature and extent of purely juridical functions." (Brown, The Recognition of New States and New Governments, 30 A. J. I. L. 689, 694.)

We respectfully suggest that the State Department made a factual statement, of importance to a court, in describing the Latvian S.S. R. as "the regime now exercising governmental functions" in Latvia (R. 55). Such a factual declaration, as to a situation abroad, is as clearly within its competence as "recognition" of "legality" of a decree is not.

What is supposed to be the status of a law or decree, not favored by "recognition" as to its "legality"? Is it illegal? If so, by what law? By what standard? Even the court below was constrained to admit cognizance of the fact that in Latvia "the nationalization decrees were restored to effect" upon the expulsion of the Germans in 1944. A law which is in effect in the place where promulgated may be displeasing in some eyes, but we cannot see that anything is subtracted from it by Executive declination to "recognize" its "legality".

Reference may be made to the decision of this Court in *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, wherein a corporation of an unrecognized state was held to be an "alien friend", no less entitled to just compensation for a governmental taking, than any other owner of property here. Would it have been possible to change the

result there by a "certificate" of "non-recognition" of the "legality" of the Soviet legislation [10] under which the *Fleet* corporation's existence was continued? Such an inference is not compatible with such statements as:

> "it cannot be said that their property is subject to confiscation here because the property of our citizens may be confiscated in the aliens' country. The provision that private property shall not be taken for public use without just compensation establishes a standard for our government which the Constitution does not make dependent on the standards of other governments" (p. 492 of 282 U. S.).

A foreign law—even of an unrecognized sovereign—may not be examined as to *validity* by a court, only as to *applicability*. The classic statement in *Underhill* v. *Hernandez*, 168 U. S. 250, 252, includes:

> "Nor can the principle be confined to lawful or recognized governments or to cases where redress can manifestly be had through public channels."

The function of the Executive as to a foreign law extends to determining whether it is lacking in "legality" only in a single sense: the international law sense. Insofar as such a law affects the rights of American nationals, it is the function and duty of the State Department to pass upon whether, in an international forum, the foreign law may be characterized as violative of treaty or other obligations of the enacting state to the United States. But to state this proposition is only to illuminate further the lack of competence in the Executive, for the purpose of litigation in a municipal court, to withhold a recognition of legality to the foreign decree.

3. The effect, if not the purpose, of the vesting orders was to withdraw from a court having jurisdiction a contest between petitioner and a Latvian company and/or [10a]

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[10] It is not without significance here that the Soviet Government's interest in and control over the *Fleet* was so clear and complete that it assigned the claim ultimately under the Litvinoff Assignment.

[10a] Depending on whether petitioner be found, after trial, to be the domiciliary successor to the Latvian company. *Cf. Canada Southern Ry. Co.* v. *Gebhard*, 109 U. S. 527.

its alleged former owners, as to the relative merits of their claims. The respondent by the vesting order has accomplished a procedurally unjust result of the sort condemned in *United States* v. *Bank of New York and Trust Co.*, 296 U. S. 463.

And now in this action, though but a stakeholder, the Custodian's successor asserts:

> "The citizenship and status of the adverse claimants to the vessels and of the company which operated them is wholly irrelevant. Appellant's case must stand on its own merits *and is not affected by the merits or demerits of any conflicting claims*" (br., C. C. A., p. 44).

This is hardly compatible with this Court's ruling in *Belmont* that a "custodian" has no interest sufficient to support a standing to challenge the effect of a foreign decree (at p. 332 of 301 U. S.).

The following is a summary of the merits of our claim, on which, as against the emigré Latvians we were entitled to a trial. As a matter of "general importance"—which this Court may or may not reach, if this petition be granted —it is now the better view that in determining the applicability and effect of foreign laws and decrees—non-recognition should be of slight judicial consequences.[11]

> E.g., Jaffe, Judicial Aspects of Foreign Relations (1933).
>
> Brown, The Recognition of New States and New Governments, 30 A. J. I. L. 689 (1936).
>
> Brown, The Legal Effects of Recognition, 44 A. J. I. L. 617 (1950).

It may be, that in a proper case, non-recognition will play some part in consideration of the conflict of laws questions involved in giving effect to a foreign decree. Whether this is such a case cannot be determined on this record, on summary judgment procedure. As between a mere custodian,

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[11] Except of course, in questions directly concerning "who is recognized here as representative of a foreign power", title to public funds, to a ship of war.

and petitioner, it will not do to say before trial or answer that non-recognition suffices to defeat the claim of petitioners. Unless the Custodian should see fit to interplead the adverse claimants, he must respond to the complaint, and assert such defenses to it as he be advised. The only defense conceivable, on this record, is that the adverse claimants have a superior status to petitioner. But this is what petitioner is willing and anxious to litigate; and if the facts and circumstances that may be brought out on a full record are examined, petitioner is confident that its claim will be sustained and a defense, based on adverse claims, rejected. Such defense, however, was not raised by the motion for summary judgment which, being before answer, admitted the allegations of the complaint. *Rogers* v. *Girard Trust Co.*, 159 F. (2) 239.

The court below—unlike the District Court [12] recognized that, apart from the conclusive effect sought to be attributed by the Department of Justice to the policy said to underlie non-recognition, petitioner had a claim which might be good by virtue of "the usual rules applicable under the established doctrines of conflict of laws". We think we need not demonstrate, to secure reversal if our petition be granted, that summary adjudication in our favor is warranted. We can, and we think we should demonstrate, that a court *could* hold our claim superior to that of the emigré claimants; such demonstration, we think, will illustrate how the vesting power has been here misused to deprive us of a trial to which we are entitled, of the merits of the conflicting claims.

No government-in-exile purports to be exercising sovereign power for Latvia or is recognized as such by the United States.[13] The regime which enacted the decrees

[12] The District Court—palpably incorrectly—said "a court may not give effect to an act of an unrecognized government, for by so doing it would tacitly recognize the government"!

[13] Hence, no room exists in this case, for a "fantastic" result such as that arrived at when the "Kerensky regime was, in accordance with diplomatic determination treated as the existing Russian Government a decade after its extinction". See Frankfurter, J., concurring in *Pink* at p. 236.

under which we claim—the same regime that was originally established more than a decade ago—is conceded by opposing counsel (Govt. br., C. C. A., p. 44) and said by the State Department to be "the regime now exercising governmental functions" in Latvia (R. 55). It is appropriate to say: "We all know that it is a government. The State Department knows it, the courts, the nations, the man on the street" (*Salimoff*, 262 N. Y. at p. 226). Ordinarily then, "non-recognition is no answer to defendant's contention, no reason for regarding as of no legal effect the laws of an unrecognized government ruling by force, as the Soviet government in Russia concededly was" (id., p. 228).

Salimoff is not now urged as "conclusive" precedent by petitioner. "There can be no true precedent in the books, when the facts are unprecedented" (*Stoddard*, 240 N. Y. at 163). "The facts of each case, the result of each possible decision determines whether that decision accords with common sense and justice," *id.* A transfer of title to a chattel within its borders by an unrecognized regime will be given effect. A transfer of title to property in New York State may or may not. What rule should apply to a ship on the high seas, at the time of nationalization, or thereafter, and before arrival in the United States?

"Jurisdiction" for effecting a change of title exists, *Restatement, Conflict of Laws*, Sec. 45. A ship which is not only owned by one of its nationals, but of its national registry, is assimilated to a chattel within the borders of the enacting state for most purposes, including transfer of title. This was the holding in *The Navemar*, 102 F. (2d) 444,[14] the only appellate decision in point, as to the effect of a nationalization decree on a vessel on the high seas.[15]

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[14] The Circuit Court in its opinion confused this Court's ruling in *The Navemar*, 303 U. S. at 75, with respect to achievement of possession *in invitum*, with the Second Circuit's subsequent definitive holding as to change in "right to possession" upon the ships "reaching the high seas."

[15] The curious references to "waters of the Western Hemisphere", in the various affidavits in support of the Attorney General's motions, were nowhere explained in his brief. Presumably, it will not be contended that a vessel on the high seas in one hemisphere is of any different status than in the other.

If this be so, there would appear to be no room in this case for application of the "public policy" exception to operation of a "confiscatory" decree—limited, even in the Chief Justice's vigorous dissent in *Pink,* to property within and subject to the laws of the forum state at the time of the promulgation of the opprobrious decree, and at all times thereafter.

Even if funds in a New York bank were involved, could the public policy exception be invoked by Latvian nationals, or a corporate entity established under Latvian Law? It would certainly seem not, under *Belmont,* 301 U. S. at page 332:

> "The public policy of the United States relied upon as a bar to the action is that declared by the constitution namely, that private property shall not be taken without just compensation. But the answer is that our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens. Compare *United States* v. *Curtiss-Wright Export Corp.* supra, at p. 318. What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled. So far as the record shows, only the rights of the Russian corporation have been affected by what has been done; and it will be time enough to consider the rights of our nationals when, if ever, by proper judicial proceeding it shall be made to appear that they are so affected as to entitle them to judicial relief."

If some question were open as to invocation of the public policy exception, must it be held on this record (before trial or answer) that nationalization upon 25% compensation is as repugnant in 1951, as it might, with "virtuous horror" [16] have been held to be in 1930? Nationalization is no longer a bogey—in *Western* as well as Eastern Europe it is a household word. And compensation far short of the full compensation that is imposed on the United States Government by its own constitution, is usual. See *Doman,*

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[16] See *Jaffe, Judicial Aspects of Foreign Relations,* Chapter III.

Postwar Nationalization of Foreign Property in Europe, 48 Col. Law Rev. 1125, *passim.* Payment in recent years, in depreciated currency, or at arbitrary valuation has made the Latvian offer of 25% seem generous by comparison. But inadequate compensation, by American standards, is the rule in all of Europe today, not the exception.

Arguing with respect to the status in the pre-recognition period of refugee directors of a Russian bank to claim its assets, the Solicitor General recently asserted to this Court (Brief in opposition to certiorari, p. 25, N. 14, *Guaranty Trust Co.* v. *United States,* 332 U. S. 753), we think correctly, that "the authority of the emigré directors to act in the name of the defunct Russo-Asiatic Bank" had no such "official sanction" as that of recognized officers of the pre-Soviet regime. "Their powers were not conclusively established by recognition by the Executive Department, *or otherwise*". Their powers, then, were subject to judicial scrutiny. And all we contend now is that the claims of the emigré Latvians should be subject to judicial scrutiny; that they should subject their status to the test of a court hearing against the merits of the claim we assert.

Ordinarily, the acts and decrees of an unrecognized regime have come to be accepted as fully—with few exceptions—as those of a recognized regime. The authoritative *projet* on the subject, of the *Institut de Droit International* was considered of sufficient importance to have been reproduced in the "Official Document" Supplement of the American Journal of International Law, 30 A. J. I. L. (Supp.) 185. It was unanimously adopted (see 30 A. J. I. L. at 692). It may be regarded, in the private international law field as comparable to a Restatement of the American Law Institute. It states:

> "Recognition 'de jure' of a government implies the recognition of the judicial, administrative or other organs, and the attribution of extraterritorial effects to their acts, in conformity with the rules of international law and particularly under the customary reservation of respect for public order, even if these acts had been consummated before any previous de facto recognition.

> These extraterritorial effects, however, do not depend on the formal act of recognition of the new government. Even in the absence of recognition, they should be acknowledged by the competent jurisdictions and administrations when, considering especially the actual character of the power exercised by the new government, these effects are in conformity with the interests of good justice and the interest of individuals."

Reaffirmation of this view, and unanimous acceptance of it among writers is reflected in Professor Brown's article last year in 44 A. J. I. L. 617 at page 639.

The retrogressive effect of the distortion of the *Pink* case expounded in *Maret* and applied below, will have the effect, if unchecked by this Court, of setting up an unsound standard, unanimously disapproved by experts who have participated in the *Institut.*

The importance of adjudication on a record after trial, as well as a significant source for a finding in favor of petitioner, appears in the very vesting orders of the Alien Property Custodian. The Custodian's rights in this action must be measured by what an adjudication as of the moment before the vesting would show, as to the relative rights of petitioner and the Latvian emigrés. At least one (the vesting order recites all) of the emigrés identified themselves with the Nazi regime in the period 1940-1943. If so, was it so clear that a trial can be dispensed with that a court would not have decided that a de-facto regime had effectually seized their interests?

If the effect of a decree of an unrecognized regime is determined by the "facts of each case", it does not need argument to demonstrate that the result will differ if the interests of an American national are involved; or if only Latvian citizens were affected, whether or not they were, in 1940-41, supporters of the Nazi regime.

4. The Custodian, by his vesting order, prevented orderly adjudication of the claims we assert. He now asserts that our claim for restitution may not be heard judicially, because raising a "political question". If so, what has

become of the remedy provided under the Act for determination of whether a mistake was made in the vesting? (*Central Union Trust Co.* v. *Garvan,* 254 U. S. 554). Petitioner's agent had actual title and possession of the vessels and then their proceeds. Orderly litigation was proceeding as to the respective rights of ownership therein. Suddenly, somehow, petitioner is deprived of a trial of its claims. May the Trading With the Enemy Act be so construed and applied?

Petitioner's agent, whose custody was petitioner's, could not resist the vesting order when it was served on him. But for that very reason he was entitled to a trial of his claim:

> "there is provision for the return of property mistakenly sequestered; and we have no hesitation in pronouncing it adequate, for it enables the claimant, as of right, to obtain a full hearing on his claim in a court having power to enforce it if found meritorious."
>
> *Stoehr* v. *Wallace,* 255 U. S. 239.

Is this statement of the reasons for permitting the summary vesting of property to be now amended to read:

> but full hearing shall be denied when the vesting agency certifies a political question adversely to the claimant with respect to a foreign law which is part of the chain of his title?

To permit, by leaving the decision below to stand, the Attorney General to promulgate such an exception is not compatible with the Fifth Amendment or the prior decisions of this Court, construing and applying the Trading With the Enemy Act. An alien corporation, even of an unrecognized country, is entitled to the protection of the Fifth Amendment in respect of the Government's power to requisition:

> *Russian Volunteer Fleet* v. *United States,* 282 U. S. 481;

No less protection should be afforded when the question is of the power to seize enemy property.

> *Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480, 487-8.

The questions presented here are judicial exactly as when "just compensation" is to be inquired into:

> *Monongahela Navigation Company* v. *U. S.*, 148 U. S. 312.
>
> "It does not rest with the public taking the property, through Congress, the Legislature, its representatives, to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry" (at p. 327).[17]

The rule is the same when the propriety of a seizure under the vesting power is sought to be questioned. The statute provides that "The court is to determine whether his claim is established." *Jackson* v. *Irving Trust Co.*, 311 U. S. 494, 501.

> "Nothing could be clearer than that in a suit so brought the court is to determine every issue necessary to the establishment of a claim" (*id.*).

This Court said in the *Jackson* case, "however the issues were labeled the court was authorized to determine them" (p. 503). But the court below declined to consider the "usual rules", or whether (granting that in a proper case a decree of an unrecognized regime might be of limited effect) this was a case in which as between an alien corporation of a wartime ally and alien nationals who might be proved to have Nazi connections the nationalization decree might under what is now the better view, be given effect.

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[17] See also, *United States* v. *New River Collieries Co.*, 262 U. S. 341.

CONCLUSION

The only case brought here previously involving a Baltic ship was *Tiedemann* v. *Estroduras S. S. Co.*, 319 U. S. 774, denying *certiorari* to review 133 F. 2d 719. Of course, no inference may be drawn from the denial of *certiorari*. And, in any event, that decision, like others cited below, had a decisive distinguishing factor overlooked by the court below: the cases were decided when the Germans were in full occupation of Latvia, Esthonia and Lithuania, and so no claim arguably could have been presented for extending the benefit of decisions such as *Salimoff*, to those claiming under a regime *not actually existing de facto*.[18]

Non-recognition remains a diplomatic tactic much resorted to by the U. S. State Department. We make no contention here as to the propriety of its exercise. But the fact of its exercise sows, like dragon's teeth, a crop of controversies which will rise to plague the courts. Such controversies involving the Chinese mainland regime now begin to appear. There will be others. Authoritative exposition by this Court as to the present value of old concepts, and the actual merit of the latter-day "political question" school of pleading and trying cases, is sorely needed. A decision of an American court disavowing concern with the "usual rules applicable" under the conflict of laws presents a controversy meriting exercise of this Court's power of supervision, and authority to expound the principles of law at stake.

We respectfully pray the petition herein be granted.

HORACE S. WHITMAN,

CHARLES RECHT,
Attorneys for Petitioner.

HOWARD N. MEYER,
of Counsel.

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[18] The Fifth Circuit expressly based its decision with respect to the claim of Estonian State S. S. Line on this ground. "We take knowledge of the fact that by force of arms Germany has usurped and taken custody and control of Estonia from Russia, and that the status of Estonia as a nation will be determined by future events" (133 F. (2d) at p. 720).

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 65

LATVIAN STATE CARGO AND PASSENGER STEAMSHIP LINE, PETITIONER

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES AND SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 56-59) is reported in 80 F. Supp. 683. The opinion of the Court of Appeals (R. 62-65) is reported at 188 F. 2d 1000.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on

February 23, 1951 (R. 66). The petition for a writ of certiorari was filed on May 22, 1951. The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code.

QUESTIONS PRESENTED

1. Whether a confiscatory "nationalization" decree of a foreign government, which purported to affect the title to property not within the territory or control of that government, is to be given effect by the courts of the United States where neither the government nor its nationalization decree is recognized by the United States.

2. Whether, in an action under Section 9(a) of the Trading with the Enemy Act to establish the plaintiff's interest in property vested by the Alien Property Custodian and obtain return of the interest so established, a plaintiff is entitled to contest the claim to the property of other persons, not parties to the suit.

STATUTE INVOLVED

This action was brought under Section 9(a) of the Trading with the Enemy Act. The relevant sections of that Act are printed in the Appendix, *infra,* pp. 22-31.

STATEMENT

Petitioner brought this suit under Section 9(a) of the Trading with the Enemy Act to recover funds vested by the Alien Property Custodian by Vesting Orders Nos. 1941, 1942, and 2092 as the

property of the Latvian Shipping Company, Janis Zalcmanis, Karlis Jansons, and Georg and "Jane" Freimanis (R. 2-4).[1] Petitioner based its claim upon "nationalization" decrees of the government of the Latvian Soviet Socialist Republic, which has not been recognized by the United States (Pet., p. 3). The district court entered judgment for the defendant (R. 60)[2] upon a motion for summary judgment supported by affidavits and exhibits (R. 4-52). The court of appeals affirmed (R. 66).

1. *The facts and the proceedings:*—The undisputed facts are as follows: In 1940, Janis Zalcmanis, Karlis Jansons, and Janis Freimanis were citizens and residents of the Republic of Latvia (R. 51). Under the name of Latvijas Kugniecibas Sabiedriba—Latvian Shipping Company—they operated three Latvian ships, the *Abgara, Ciltvaira,* and *Regent* (R. 10, 36, 40, 45, 52). Each of them owned a one-third interest in the *Abgara* and the *Ciltvaira* (R. 38, 40, 42). Freimanis was the sole owner of the *Regent* (R. 40, 42).

In June 1940, Soviet troops occupied the Re-

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[1] The vesting orders are printed in the Appendix, *infra,* pp. 31-41. By Executive Order No. 9788 (Oct. 15, 1946, 11 F.R. 11981) the Attorney General succeeded to the powers and duties of the Alien Property Custodian. In this brief, the terms "Alien Property Custodian" or "Custodian" will be used, as the context may require, to refer either to the Alien Property Custodian or the Attorney General as his successor.

[2] The suit was originally brought against Tom C. Clark as Attorney General. J. Howard McGrath was duly substituted as a defendant upon his succession to that office.

public of Latvia. A new government was set up and a constitution on the Soviet Russian model adopted. Shortly thereafter, the U.S.S.R. announced that the Latvian Republic, renamed the "Latvian Soviet Socialist Republic" had been incorporated into the Soviet Union. By a legislative "Declaration" (R. 52), made by the [Soviet] Latvian Parliament on July 22, 1940, and a "Decree" (R. 53) issued on October 5, 1940 by the "Presidium of the Latvian Supreme Soviet", all Latvian shipping enterprises and their assets, both at home and abroad, and all rights belonging to such enterprises, such as claims to insurance sums, etc., were declared nationalized. The compensation payable to the owners of the nationalized ships was fixed at 25% of their value.[3] On October 25, 1940, pursuant to a decree of the "Council of People's Commissars of the Union of Soviet Socialist Republics," plaintiff was organized as a public corporation for the purpose of holding title to the nationalized Latvian ships (R. 10, 28, 31, 33, 34, 35, 36, 51).

None of the three vessels was within the territorial waters of the Latvian S.S.R. or the U.S.S.R. when the nationalization laws were enacted. It is undisputed that on October 5, when the "Decree" was passed, the *Abgara* was in Argentinian territorial waters (R. 48) and the *Ciltvaira* was on the

[3] There is nothing in the record or the files of the Department of Justice to suggest that even this fractional "compensation" has been paid or tendered.

high seas in the Western Hemisphere (R. 45), and that neither vessel has at any time since the latter part of 1939 been in European waters (R. 46-50). The *Regent,* dry-docked in Brooklyn, New York, had been in the custody of the United States marshal for the Eastern District of New York (R. 44) since September 24, 1940. Her position on July 22, 1940, the date of the "Declaration", does not appear but it is undisputed that, like her sister ships, she had on or before that date left Latvian and Soviet Russian territorial waters and never returned to them.

Sometime before February 1941, all three vessels had arrived in New York. Following their arrival, possessory libels were filed against the *Ciltvaira* and *Abgara* in the United States District Court for the Southern District of New York (R. 27, see also Vesting Order No. 1941, App., *infra,* p. 32, 8 F. R. 11304) and against the *Regent* in the Eastern District of New York (R. 27-28, see also Vesting Order No. 1942, App., *infra,* pp. 35-36, 8 F. R. 11304). The libels were filed in the name of the Latvian Shipping Company and certain individuals whose relationship to the vessels does not appear from this record.

On petitioner's behalf, Charles Recht, one of petitioner's counsel here, filed intervening libels against all three vessels (R. 9, 35); in the course of these proceedings, pursuant to orders of the district courts, Mr. Recht and Joseph G. Kearns

were appointed joint trustees for the ships (R. 27-29). While operated under this trusteeship the ships were sunk in 1942 (R. 28, 29, 34, 38, 40, 48), whereupon the federal courts ordered the insurance proceeds and operating revenues of the vessels deposited in the names of the two trustees (R. 28, 29). These were the funds seized by the vesting orders.

On August 6, 1943, the Alien Property Custodian vested the sums standing in the name of Recht and Kearns as trustees of the three vessels (Vesting Orders Nos. 1941, 1942, App., *infra,* pp. 31-37, 8 F.R. 11304) and on September 4, 1943, he vested an additional sum standing in the name of the Latvian Shipping Company (Vesting Order No. 2092, App., *infra,* pp. 38-41, 8 F.R. 12831). The Custodian's orders were based on a determination that the funds vested were the property of Karlis Jansons, Janis Zalcmanis, and of the widow, son and heirs of Janis Freimanis, who had meanwhile died in Germany. The Custodian also found that the individuals named in the orders were residents of Germany or of Latvia, which was then German-occupied, and that they were nationals of Germany.[4]

Conflicting claims for the return of the vested funds were filed with the Custodian under Section

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[4] Under the Trading with the Enemy Act, residents of enemy-occupied territory are regarded as enemy nationals whose property will be vested. Executive Order No. 8389, as amended, Sec. 5 E(i), 6 F.R. 2897; Executive Order No. 9193, Secs. 2, 10, 7 F.R. 5205. *Cf.* Section 2 of the Trading with the Enemy Act, 40 Stat. 411, 50 U.S.C. App. § 2.

32 of the Trading with the Enemy Act. After hearings, claims for the funds derived from the *Abgara* and the *Ciltvaira* by Janis Zalcmanis, by the administrator of the estate of Karlis Jansons (who had died in the meantime), and by the Latvian Shipping Company were allowed on April 27, 1948, and on the same day a claim filed by the petitioner for the funds derived from all three ships was disallowed (R. 3). On June 11, 1951, claims filed by the widow and son of Janis Freimanis, who had died in the meantime, for one-third of the funds derived from the *Abgara* and the *Ciltvaira* and for the funds derived from the *Regent* were disallowed by the Chief Hearing Examiner for Title Claims of the Office of Alien Property[5] on the ground that the claimants were German citizens who were present in Germany after December 7, 1941 and who, therefore, were not eligible to receive a return of property under Section 32 of the Trading with the Enemy Act.[6]

2. *Executive policy:*—On July 23, 1940, the day after the legislative "Declaration" purporting to confiscate Latvian shipping enterprises (*supra,* p. 4),[7] Mr. Sumner Welles, then the acting Secre-

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[5] Determinations of the Hearing Examiner are open to public inspection. 8 C.F.R. § 503.1(3).

[6] See Sec. 32 of the Act, Appendix, *infra*, pp. 26 ff.

[7] Even prior to that date all property of Latvian, Lithuanian, and Estonian nationals had been frozen. Executive Order No. 8484 (5 F.R. 2586). By General License No. 94, December 7, 1945 (10 F.R. 14814) the Treasury Department lifted freezing controls over most blocked countries, including Latvia, with respect to transactions after its date.

tary of State, issued the following formal statement which is notable for its disregard of the restraint usual in diplomatic utterances:

> During these past few days the *devious processes* whereunder the political independence and territorial integrity of the three small Baltic republics—Estonia, Latvia, and Lithuania—were to be *deliberately annihilated* by one of their more powerful neighbors, have been rapidly drawing to their conclusion.
>
> From the day when the peoples of these republics first gained their independent and democratic form of government the people of the United States have watched their admirable progress in self-government with deep and sympathetic interest.
>
> The *policy of this Government is universally known.* The people of the United States are opposed to *predatory activities* no matter whether they are carried on *by the use of force or by the threat of force.* They are likewise opposed to any form of intervention on the part of one state, however powerful, in the domestic concerns of any other sovereign state, however weak.
>
> These principles constitute the very foundations upon which the existing relationship between the 21 sovereign republics of the New World rests.
>
> *The United States will continue to stand by these principles,* because of the conviction of the American people that unless the doctrine in which these principles are inherent once again governs the relations between nations,

> the rule of reason, of justice, and of law—in other words, the basis of modern civilisation itself—cannot be preserved. [3 Department of State Bulletin (1940) p. 48.] [Italics added.]

On March 14, 1942, the Department of State issued four documents certifying that the United States had not recognized the absorption of Latvia by either Germany (then in military control of Latvia) or the Soviet Union, that the legality of the so-called "nationalization decrees" or of any acts of the Soviet or German regimes there was not recognized by the United States, and that all treaties between the United States and the independent Latvian Republic were still in existence.[8]

The diplomatic and consular representatives of the independent Latvian Republic have continued to the present to be authorized to discharge their official duties in this country as heretofore,[9] while this Government has steadfastly refused to permit the consular officials of the Soviet Union to act on behalf of Latvia and her nationals in this country.[10]

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[8] Nos. 1228, 1229, 1230, 1242; for texts see Langer, *Seizure of Territory* (1947), p. 264, n. 32. Similar documents appear to have been issued concerning Estonia as early as April 15, 1941. See *The Maret*, 145 F. 2d 431, 438, n. 33 (C.A. 3).

[9] See State Department, Diplomatic List, June 1951, listing Mr. Jules Feldmans, Minister Plenipotentiary, as chargé d'affaires of the Latvian Republic.

[10] By letters dated March 26, 1948, the Department of State advised all state governors that:

> The Department has never recognized the incorporation of Latvia, Estonia, and Lithuania into the Soviet Union and, consequently does not regard Soviet consular officers or their attorneys as having any right to act on

This policy of non-recognition is again stated in explicit terms in the certificates issued August 2, 1948, by Secretary of State Marshall, which were introduced in the district court in support of respondent's motion for summary judgment (R. 20-21). In them the Secretary certified:

> * * * that the incorporation of Latvia by the Union of Soviet Socialist Republics is not recognized by the Government of the United States.
>
> * * * that the legality of the so-called "nationalization" laws and decrees, or of any of the acts of the Soviet regime which assumed power in Latvia in 1940, or of any subsequent regime in that country has not been recognized by the Government of the United States.

ARGUMENT

In accordance with an explicit policy of the Executive, acting as this country's prime instrument in the conduct of foreign relations, the court of appeals has refused to give effect to a confiscatory decree of an unrecognized government with respect to property not within the territory of that government. In so holding it followed the line plainly marked out by the decisions of this Court.

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behalf of non-resident Latvian, Estonian or Lithuanian nationals. * * * In the case * * * of Latvian * * * nationals such right has been reserved to consular officers of * * * [Latvia] by Article XXV of the treaty of Friendship, Commerce and Consular Rights of 1928 between the United States and Latvia * * * [For full text see copy of letter addressed to the Governor of Alabama, App., *infra*, pp. 41-43.]

The decision below is correct and does not call for further review.

1. The doctrine is well settled in American constitutional law that executive decisions in the field of foreign affairs are by their very nature not susceptible of review by the courts. Particularly in the matter of recognition or non-recognition of foreign governments and the policy underlying the position taken by our Government the courts have never hesitated to accept executive determinations as conclusive. *Rose* v. *Himely*, 4 Cranch. 241, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246, 323; *Jones* v. *United States*, 137 U.S. 202, 212; *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302; *United States* v. *Belmont*, 301 U.S. 324, 328; *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 137-138; *United States* v. *Pink*, 315 U.S. 203. See also Corwin, *The President's Control of Foreign Relations* (1917) p. 82.[11]

United States v. *Pink*, 315 U.S. 203, made clear the comprehensive scope of this executive power. The basic question in that case was the power of the New York courts to apply the state's policy against confiscation in determining rights to the New York assets of a "nationalized" Russian insurance company, despite this country's recognition of the Soviet Union in 1933 and the negotiation of the

[11] These principles apply where the question involves the recognition or nonrecognition of the annexation of new territory by an existing state, cf. *Williams* v. *Suffolk Insurance Co.*, 13 Peters 415, 420; *In re Taylor*, 118 Fed. 196 (D. Mass.); *The Kotkas*, 35 F. Supp. 983, 984 (E.D.N.Y.); *The Signe*, 37 F. Supp. 819, 822 (E.D. La.),

Litvinov Assignment which had established a federal public policy upholding the validity of the Soviet nationalization decrees. In rejecting the claim that the New York courts were free to disregard this policy, the Court (a) sustained the executive's power "to determine the public policy of the United States with respect to the Russian nationalization decrees" (315 U.S. at 229-230),[12] (b) pointed out that the enforcement by the New York courts of the state's public policy "would collide with and subtract from the Federal policy" (p. 231) by refusing "to give effect or recognition in New York to acts of the Soviet Government which the United States by its policy of recognition agreed no longer to question" (p. 231) and restoring "some of the precise impediments to friendly relations which the President intended to remove on inauguration of the policy of recognition of the

[12] "*The powers of the President in the conduct of foreign relations included the power, without consent of the Senate, to determine the public policy of the United States with respect to the Russian nationalization decrees.* 'What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government.' *Guaranty Trust Co.* v. *United States*, 304 U.S. at p. 137. That authority is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition. * * * It was the judgment of the political department that full recognition of the Soviet Government required the settlement of all outstanding problems including the claims of our nationals. Recognition and the Litvinov Assignment were interdependent. We *would usurp the executive function if we held that that decision was not final and conclusive in the courts.*" (315 U.S. at 229-230.) (Italics added.)

Soviet Government" (p. 231), and (c) concluded that the New York courts could not thus take action which "amounts in substance to a rejection of a part of the policy underlying recognition by this nation of Soviet Russia" (p. 233). Similarly, the concurring opinion emphasized that the state court could not adopt a rule which would "thwart to any extent 'the policy which the United States has adopted' when the President reestablished friendly relations in 1933" (315 U.S. at 240).[13]

Here, as in *Pink,* the President, speaking through the appropriate executive department, has determined "the public policy of the United States with respect to the [Latvian] nationalization decrees". He has declared that the annexation and sovietization of the Baltic States which resulted in the issuance of the decrees on which petitioner relies was an act of aggression to which this nation will give no countenance. And the Secretary of State has expressly certified to the district court that the legality of these decrees "has not been recognized by the Government of the United States". This unequivocal affirmative policy has existed for over a decade. It began in the days of the Nazi-Soviet pact, was adhered to

[13] Even Mr. Chief Justice Stone, dissenting, based his disagreement primarily on the ground that the actions taken by the Executive did not in his view disclose a clear purpose to require state recognition of the Russian confiscatory decrees as applied to property having a situs in New York and left open the question whether had such a clear purpose been disclosed, it would override any inconsistent state policy.

throughout World War II when the United States and the Soviet Union were allies, and has continued since the ending of hostilities in 1945. At present it has added significance, for our protests against past Soviet aggressions have been reaffirmed by the declared determination of this country to contain further lawless expansion of the Soviet Union. For the courts to disregard these definitive executive determinations would—as clearly as in *Pink*—"collide with and subtract from the Federal policy" (315 U.S. at 231) and amount to a "rejection of a part of the policy underlying" nonrecognition by this nation of the Soviet conquests (315 U.S. at 233).

Petitioner attempts to have the principles of the *Pink* case put to one side because instead of recognizing Soviet Latvia and her confiscatory decrees, as he had done in the case of the Soviet Union, the President, in the responsible conduct of our foreign policy, explicitly determined that this recognition should be withheld. The theory of the *Pink* decision, however, makes a non-recognition determination no less binding on the courts than recognition would have been. For the power of the Executive to recognize foreign governments and their confiscatory decrees necessarily includes the power to refuse to recognize. As a practical matter the determination to continue to recognize the independent Latvian Republic can be made effective only by denying recognition to the Soviet

government of Latvia.[14] Such non-recognition is as potent an instrument of our foreign policy as is recognition. See, Corwin, *The President* (3d ed. 1948), p. 230. And the firm foundation of the *Pink* holding is that courts would usurp the Executive's functions in the field of foreign relations if they refused to be bound by a valid executive act in that sphere. See 315 U.S. at 229-230. As the concurring opinion in that case points out, had any state court during the period from 1918 to 1933 "given comfort to the Russian views [on propaganda and expropriation] in this contest between its government and ours, it would, to that extent, have interfered with the conduct of our foreign relations by the Executive * * *." 315 U.S. at 240.

Acceptance of petitioner's thesis as to non-recognition would result in a curiously one-handed authority of the Executive with respect to foreign relations. It could recognize a new government and that recognition would be binding and conclusive, but until it was prepared to accord recognition it could do nothing. No decision of this Court and no principle of law warrants such a result. The power of the President in the field of foreign relations is "plenary and exclusive". *United States* v. *Curtiss-Wright Export Corp.*,

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[14] The statements in the petition (pp. 13, 18) that there is no government-in-exile recognized for Latvia are erroneous. See *supra*, pp. 9-10, and also the certificate of the Secretary of State which appears in the Record at pages 19 and 20.

299 U.S. 304, 320. As the court of appeals said, referring to petitioner's arguments, "The control of the executive branch over foreign affairs must necessarily be broader than that". (R. 65).[15]

2. Apart from deference to the executive declarations of non-recognition, the courts below would have been justified in refusing enforcement of the nationalization decrees as contrary to American public policy. The courts have long held that effect will be given to the political decrees of unrecognized governments only where the legislation does not conflict with our concepts of justice. *James*

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[15] The oft-repeated statement that "the courts of one country will not sit in judgment on the acts of the government of another done within its own territory" has been applied by this Court only where recognition has been accorded the foreign government. See *Underhill* v. *Hernandez*, 168 U.S. 250, 253-4; *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 303-304; *Ricaud* v. *American Metal Co.*, 246 U.S. 304, 307; *United States* v. *Pink*, 315 U.S. 203, 233. Certainly, this principle cannot govern where the Executive has, in addition to withholding recognition from the government, affirmatively withheld recognition from the specific governmental action involved.

In any event, the ships in question were not within Latvia's territorial waters when the decrees were issued or at any time since (R. 44, 45, 46-50), and petitioner never acquired possession of them or the obedience of the officers in charge of the ships. Cf. *Compania Espanola* v. *Navemar*, 303 U.S. 68, 75-6. Petitioner also relies on the "floating island" theory (p. 19) which assimilates a ship to a chattel within the borders of its home state for many purposes. But that theory will not be applied in derogation of the policy of the United States. *Cunard S. S. Co.* v. *Mellon*, 262 U.S. 100, 123. And to apply the theory in the instant case would assume that the ships changed the flag of the independent and recognized Latvian Republic for that of Soviet Latvia. The invasion by Russia did not operate to change the allegiance of the masters and crews, who were outside the Latvian borders. See, *United States ex rel. Schwarzkopf* v. *Uhl*, 137 F. 2d 898, 902 (C.A. 2).

& Co. v. *Second Russian Ins. Co.*, 239 N.Y. 248, 255-6; *Petrogradsky M. K. Bank* v. *National City Bank*, 253 N.Y. 23, 28-35. Confiscatory decrees of the Soviet Latvian type clearly offend our national policy of just compensation and they have been enforced only where they have attained full physical effectiveness over the disputed property while it was within the expropriating country's jurisdiction, or where non-enforcement would be unjust to private parties who had dealt with the nationalizing sovereign in good faith. *Petrogradsky M. K. Bank* v. *National City Bank, supra; Salimoff & Co.* v. *Standard Oil Co.*, 262 N.Y. 220, 225; *Banque de France* v. *Equitable Trust Co.*, 33 F. 2d 202 (S.D.-N.Y.). Petitioner's case cannot fall within either of these exceptions. The Soviet Latvian regime has never been able to reduce the confiscated ships to possession or otherwise establish its control over them. *Supra*, pp. 4-6. And petitioner is patently not an innocent third part but an *alter ego* of the expropriating government itself. This suit is, in effect, a demand upon a federal court by Soviet Latvia for direct aid in the enforcement of its nationalization program.

3. All the cases passing upon the nationalization decrees of the Soviet regimes in the Baltic states are in accord with the court below. In particular, the Third Circuit also explicitly accepts the executive policy of non-recognition as binding. *The Maret*, 145 F. 2d 431 (C.A. 3). See also *The Signe*,

39 F. Supp. 810 (E.D. La.), affirmed *sub. nom. The Florida,* 133 F. 2d 719 (C.A. 5), certiorari denied, 319 U.S. 774, rehearing denied, 320 U.S. 811; *The Kotkas,* 35 F. Supp. 983 (E.D.N.Y.); *The Kuressaar,* A.M.C. (1941) 1190 (D.C. Md.) (not otherwise reported); *In re Grauds' Estate,* 43 N.Y.S. 2d 803 (Surr. Ct. N.Y. County). Cf. *The S. S. Denny,* 40 Supp. 92 (D.N.J.), reversed, 127 F. 2d 404, in which the Third Circuit reversed on the ground that there was insufficient evidence that a power of attorney from the former owners had been obtained by duress.

Similar attempts to secure judicial recognition of these decrees have failed in Ireland (*Zarine* v. *Owners of S .S. Ramava,* [1942] I. R. 148 (Sup. Ct. Ireland)) and in England and Canada, although those countries have given *de facto* recognition to the Soviet annexation of the Baltic States. *A/S Tallinna Laevauhisus* v. *Estonian State S. S. Line,* 80 LL.L. Rep. 99 (Ct. of Appeal); *Laane and Baltser* v. *Estonian State Cargo and Passenger Steamship Line,* [1949] 2 D.L.R. 641 (Sup. Ct., Canada).

4. In addition to its arguments as to the lack of effect of non-recognition, petitioner advances an alternative line of argument, urged for the first time in this court, that the United States is here a mere stakeholder, that the real controversy is between petitioner and the emigré former owners of the Latvian ships, and that the judgment below

deprived it of an opportunity to have that controversy adjudicated on a "record after trial" (Pet. 22-23), as required by Section 9(a) of the Act.

This argument manifests a misunderstanding of the machinery and operation of the Trading with the Enemy Act. By the vesting orders in question the Custodian took the *res* itself, and not merely the "right, title and interest" of the former owners, and he did not merely step into their shoes.[16] *Kahn* v. *Garvan,* 263 Fed. 909, 913 (S.D. N.Y.); *Stern* v. *Newton,* 180 Misc. 241, 39 N.Y.S. 2d 593, 598. Cf. *Zittman* v. *McGrath,* 341 U.S. 446, 463-464. All private interests in the funds were terminated and all right, title, and interest became vested in the Custodian. *Commercial Trust Co.* v. *Miller,* 262 U.S. 51, 56; *United States* v. *The Antoinetta,* 153 F. 2d 138, 143 (C.A. 3), certiorari denied, 328 U.S. 863. The funds became the property of the United States and the former owners no longer had any interest therein. *Cummings* v. *Deutsche Bank,* 300 U.S. 115, 121.

The vesting, once made, could be questioned only in a suit under Section 9(a), which is the exclusive

[16] Petitioner's statement (Pet. 23) that at the time of vesting its "agent had actual title and possession" has no foundation. As a court-appointed trustee Recht was an officer of the court, not petitioner's agent, and whatever "title and possession" he and his co-trustee had was held for the court. In both World War I and World War II, property held by fiduciaries has been held subject to seizure. *Central Trust Co.* v. *Garvan,* 254 U.S. 554; *Farmers' Loan & Trust Co.* v. *Hicks,* 9 F. 2d 848 (C.A. 2), certiorari denied, 269 U.S. 583; *Propper* v. *Clark,* 337 U.S. 472; *Central Hanover Bank & Trust Co.* v. *Markham,* 68 F. Supp. 829 (S.D.N.Y.).

remedy. *Clark* v. *Uebersee Finanz-Korporation,* 332 U.S. 480, 487. And in its suit under Section 9(a) the petitioner had the burden of establishing its own title as against the United States in a proceeding *de novo. Stoehr* v. *Wallace,* 255 U.S. 239, 246.[17] To that proceeding, whatever record petitioner might have been able to make as to the merits or the demerits of the title of the emigré claimants was irrelevant. As to petitioner's own title, the matters of fact upon which it based its claim, including the nationalization decrees (Pet. 3), were admitted, and only the question of law as to their legal effect remained, so the entry of summary judgment was proper. *Associated Press* v. *United States,* 326 U.S. 1, 5-6.[18]

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[17] The terms of Section 9(a) make it clear that the plaintiff must establish his own right, title, or interest. The statute first grants the right to sue to a non-enemy person "claiming any interest, right, or title in any money or other property" vested by the Custodian, or claiming as creditor of the enemy, and then provides that such persons may sue "to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled."

[18] The situation is not changed by the fact that, under his discretionary authority under Section 32 of the Act to make returns to enemies, the Custodian has announced his intention to return partial interests in two of the three ships to the former Latvian owners. See *supra,* pp. 6-7. Publication of a notice of intention to return under 32 confers no right of action and the notice may be revoked. Section 32(f). Decisions under Section 32 are not subject to judicial review. *McGrath* v. *Zander,* 177 F. 2d 649 (C.A.D.C.); *Guessefeldt* v. *McGrath,* C.A.D.C., May 3, 1951. And even in the case

CONCLUSION

The decision below is correct and there is neither a conflict of decisions nor a substantial question as to the application of prior decisions of this Court. It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

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JULY, 1951.

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of a return under Section 9, which is reviewable, we know of nothing in the Act or elsewhere which gives an unsuccessful claimant the right to enjoin a return to a successful claimant, or to require that conflicting claimants be interpleaded.

APPENDIX

I. *The Statute*

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U.S.C. App. 1 et seq.:

> SEC. 2. That the word "enemy", as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—
>
> (a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.
>
> SEC. 5.
>
> * * * * *
>
> (b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> (A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers

of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * *

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above

required and shall have made no application to the President, said claimant may institute a suit in equity in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

* * * * *

SEC. 32. (a) The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who has filed a notice of claim for return, in such form as the President or such officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by the court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and

(2) that such owner, and legal representative or successor in interest, if any, are not—

(A) the Government of Germany, Japan, Bulgaria, Hungary, or Rumania; or

(B) a corporation or association organized under the laws of such nation: *Provided,* That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be returned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior

to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referred to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: *Provided further,* That such owner or owners shall succeed to those obligations limited in aggregate amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by persons not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of Italy or of any nation with which the United States has not at any time since December 7, 1941, been at war: *Provided,* That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided,* That notwithstanding the provisions of this subdivision (D) return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided,* That notwithstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since Decem-

ber 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section; and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof;

(4) that the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 (56 Stat. 1013; 35 U.S.C. 89-96), in respect of the property or interest or proceeds to be returned and that the claimant and his predecessor in interest, if any, have no actual or potential liability of any kind under the Renegotiation Act or the said Act of October 31, 1942; or in the alternative that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate therefor; and

(5) that such return is in the interest of the United States.

* * * * *

(e) No return hereunder shall bar the prosecution of any suit at law or in equity against a person to whom return has been made, to establish any right, title, or interest, which may exist or which may have existed at the time of vesting, in or to the property or interest returned, but no such suit may be prosecuted by any person ineligible to receive a return under subsection (a) (2) hereof. With respect to any such suit, the period during which the property or interest or proceeds returned were vested in the Alien Property Custodian shall not be included for the purpose of determining the application of any statute of limitations.

(f) At least thirty days before making any return to any person other than a resident of the United States or a corporation organized under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, the President or such officer or agency as he may designate shall publish in the Federal Register a notice of intention to make such return, specifying therein the person to whom return is to be made and the place where the property or interest or proceeds to be returned are located. Publication of a notice of intention to return shall confer no right of action upon any person to compel the return of any such property or interest or proceeds, and such notice of intention to return may be revoked by appropriate notice in the Federal Register. After publication of such notice of intention and prior to revocation thereof, the property or interest or proceeds specified shall be subject to attachment at the suit of any citizen or resident of the United States or any corporation organized

under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, in the same manner as property of the person to whom return is to be made: *Provided*, That notice of any writ of attachment which may issue prior to return shall be served upon the Alien Property Custodian. Any such attachment proceeding shall be subject to the provisions of law relating to limitation of actions applicable to actions at law in the jurisdiction in which such proceeding is brought, but the period during which the property or interest or proceeds were vested in the Alien Property Custodian shall not be included for the purpose of determining the period of limitation. No officer of any court shall take actual possession, without the consent of the Alien Property Custodian, of any property or interest or proceeds so attached, and publication of a notice of revocation of intention to return shall invalidate any attachment with respect to the specified property or interest or proceeds, but if there is no such revocation, the President or such officer or agency as he may designate shall accord full effect to any such attachment in returning any such property or interest or proceeds.

II. *The Vesting Orders*

Office of the Alien Property Custodian, Washington

Vesting Order Number 1941

[8 F.R. 11304]

IN RE LATVIJAS KUGNIECIBAS SABIEDRIBA (LATVIAN SHIPPING COMPANY) AND MARTIN OSIS, LIBEL-

ANTS, v. S.S. "CILTVAIRA", HER TACKLE, APPAREL, FURNITURE, ETC., AND DANIEL F. YOUNG, INC., RESPONDENTS (ADMIRALTY No. 122-195)

and

LATVIJAS KUGNIECIBAS SABIEDRIBA (LATVIAN SHIPPING COMPANY), AND KARLIS AIGARS, LIBELANTS, v. S.S. "ABGARA", HER TACKLE, APPAREL, FURNITURE, ETC., AND AUGUSTS PATERIS GALDINS, RESPONDENTS (ADMIRALTY No. 122-40)

(File No. F-65-71; E. T. Sec. 704)

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order 9095, as amended, and pursuant to law, the Alien Property Custodian after investigation,

Finding that—

(1) The property and interest hereinafter described are property which is in the process of administration by Charles Recht and Joseph G. Kearns, trustees, acting under the judicial supervision of the United States District Court, Southern District of New York;

(2) Karlis Jansons and Janis Zalcmanis are persons acting or purporting to act directly or indirectly for the benefit of or on behalf of a national of a designated enemy country, Germany, who is a person within such designated enemy country, Germany, and such persons are therefore nationals of a designated enemy country, Germany;

(3) Such property and interests are payable or

deliverable to, or claimed by, nationals of a designated enemy country, Germany; namely,

Nationals and last known address:

Karlis Jansons, Riga, Latvia; Janis Zalcmanis, Riga, Latvia; Georg Freimanis, Germany; "Jane" Freimanis, true first name unknown, the widow of Janis Freimanis, deceased, Germany.

Heirs, legatees, devisees, distributees, names unknown, entitled to receive the assets of the estate of Janis Freimanis, who died a resident of Germany, Germany;

and determining that—

(4) If such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country, Germany;

(5) The national interest of the United States requires that Karlis Jansons and Janis Zalcmanis be treated as nationals of a designated enemy country, Germany; and

Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest,

Now, therefore, the Alien Property Custodian hereby vests the following property and interests:

The sum of $258,398.76 together with any and all additions of interest and principal thereto subject to the deductions of any at-

torneys' fees and trustees' fees, commissions and expenses as may be payable pursuant to an order of the court exercising jurisdiction over said sum which is in the possession of Joseph G. Kearns and Charles Recht as trustees for the Latvian Steamship *Ciltvaira*.

The sum of $578,826.75 together with any and all additions of interest and principal there to subject to the deductions of any attorneys' fees and trustees' fees, commissions and expenses as may be payable pursuant to an order of the court exercising jurisdiction over said sum which is in the possession of Joseph G. Kearns and Charles Recht as trustees for the Latvian Steamship *Abgara*.

to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within

such further time as may be allowed by the Alien Property Custodian.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Dated: August 6, 1943.

[OFFICIAL SEAL]

(Signed) LEO T. CROWLEY,
Alien Property Custodian.

OFFICE OF ALIEN PROPERTY CUSTODIAN,
WASHINGTON

Vesting Order Number 1942

[8 F. R. 11304]

IN RE LATVIJAS KUGNIECIBAS SABIEDRIBA, LIBELANT, v. STEAMSHIP "REGENT", HER TACKLE, APPAREL AND FURNITURE—AND—ANDERS SVARRER, RESPONDENTS (ADMIRALTY #16052)

(File No. F-9-100-65-71; E. T. Sec. 704)

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order 9095 as amended, and pursuant to law, the Alien Property Custodian after investigation,

Finding that—

(1) The property and interests hereinafter described are property which is in the process of administration by Charles Recht and Joseph G. Kearns, Trustees, acting under the judicial super-

vision of the United States District Court, Eastern District of New York.

(2) Such property and interests are payable or deliverable to, or claimed by, nationals of a designated enemy country, Germany, namely;

Nationals and last known address:

Georg Freimanis, Germany. "Jane" Freimanis, true first name unknown, the widow of Janis Freimanis, deceased, Germany.

The heirs, legatees, devisees, distributees, names unknown, entitled to receive the assets of the estate of Janis Freimanis, who died a resident of Germany, Germany.

And determining that—

(3) If such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country, Germany; and

Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest,

Now, therefore, the Alien Property Custodian hereby vests the following property and interests:

> The sum of $333,793.93 together with any and all additions of interest and principal thereto subject to the deductions of any attorneys' fees, trustees' fees, commissions and expenses as may be payable pursuant to an order of the court exercising jurisdiction over

said sum which is in the possession of Joseph G. Kearns and Charles Recht and trustees for the Latvian Steamship *Regent,*

to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Dated: August 6, 1943.

[OFFICIAL SEAL] LEO T. CROWLEY,
Alien Property Custodian.

OFFICE OF ALIEN PROPERTY CUSTODIAN
WASHINGTON

Vesting Order Number 2092

[8 F. R. 12831]

In re: ESTATE OF JANIS FREIMANIS, ALSO KNOWN AS JANIS FREYMAN AND JANIS FREYMANN, DECEASED: ESTATE OF JANIS ZALCMANIS, ALSO KNOWN AS JANIS ZALCMAN AND J. SALCMAN, ABSENTEE: AND ESTATE OF KARLIS JANSONS, ALSO KNOWN AS K. JANSON, ABSENTEE

(File No. 017-3777)

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order 9095, as amended, and pursuant to law, the Alien Property Custodian after investigation,

Finding that—

(1) The property and interests hereinafter described are property which is in the process of administration by Irving Trust Company, Woolworth Branch, New York City, depositary, acting under the judicial supervision of the Surrogate's Court, New York County, State of New York;

(2) Karlis Jansons, also known as K. Janson, and Janis Zalcmanis, also known as Janis Zalcman and J. Salcman, are persons acting or purporting to act directly or indirectly for the benefit of or on behalf of a national of a designated enemy country, Germany, who is a person within such designated enemy country, Germany, and such persons are therefore nationals of a designated enemy country, Germany;

(3) Such property and interests are payable or deliverable to, or claimed by, nationals of a designated enemy country, Germany; namely,

Nationals and last known address

Karlis Jansons also known as K. Janson, Riga, Latvia.
Janis Zalcmanis, also known as Janis Zalcman and J. Salcman, Riga, Latvia.
Georg Freimanis, Germany
"Jane" Freimanis, true first name unknown, the widow of Janis Freimanis, deceased, Germany.

The heirs, legatees, devisees, distributees, names unknown, entitled to receive the assets of the Estate of Janis Freimanis, who died a resident of Germany, Germany.

And determining that—

(4) If such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country, Germany;

(5) The national interest of the United States requires that Karlis Jansons, also known as K. Janson, and Janis Zalcmanis, also known as Janis Zalcman and J. Salcman, be treated as nationals of a designated enemy country, Germany; and

Having made all determinations and taken all action, after appropriate consultation and cer-

tification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest,

Now, therefore, the Alien Property Custodian hereby vests the following property and interests:

The sum of $40,247.83, together with any and all additions of interest or principal thereto on deposit in the Irving Trust Company, Woolworth Branch, New York City, in the name of the Latvian Shipping Co.,

to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian.

The terms "national" and "designated enemy

country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Dated: September 4, 1943.

[OFFICIAL SEAL.]

(S.) Leo T. Crowley,
Alien Property Custodian.

III. *Letter of the Department of State*

DEPARTMENT OF STATE
WASHINGTON

March 26, 1948

The Honorable The Governor of Alabama.

SIR: There have recently come to the Department's attention several cases in which a person acting as attorney for the Consul General of the Union of Soviet Socialist Republics in New York City, claimed the right in behalf of nonresident Latvians, Estonians and Lithuanians to receipt for their distributive shares derived from estates in process of probate.

The Department has never recognized the incorporation of Latvia, Estonia, and Lithuania into the Soviet Union, and consequently does not regard Soviet consular officers or their attorneys as having any right to act on behalf of nonresident Latvian, Estonian or Lithuanian nationals with respect to distributive shares owing to them from estates of persons dying in the United States. In the cases of Latvian and Estonian nationals, such right has been reserved to consular officers of the respective countries by Article XXV of the Treaty

of Friendship, Commerce and Consular Rights of 1928 between the United States and Latvia (45 Stat. 2641) and Article XXIV of the Treaty of Friendship, Commerce and Consular Rights of 1928 between the United States and Estonia (44 Stat. 2379). Moreover, even in the absence of applicable treaty provisions, the Department does not consider that Soviet consular officers in the United States have any right to represent nationals of a third country, whether residing in the United States or elsewhere, without that country's consent. It is respectfully requested that you advise the courts of your State having to do with probate proceedings of the position of the Department with respect to the incorporation of the Baltic States into the Soviet Union, and that you request them in considering the validity of powers of attorney given by persons in the Baltic States to Soviet officials in the United States or their attorneys to give appropriate consideration to this Department's position of nonrecognition of Soviet sovereignty in Latvia, Estonia, and Lithuania.

As you doubtless know, it has been generally recognized by American writers on international law as well as by the courts that the questions as to what regime in a foreign country is to be recognized as the government thereof and what persons are to be recognized as representing such regime are matters for determination by the executive branch of our Government, although there have been some instances in which the legislative branch has had a part in the recognition of new states. Needless to say, where the conclusion of a treaty or the sending of an ambassador or minister is in-

volved, the Senate has a part. (I Moore, *International Law Digest,* 245-247; 1 Hackworth, *Digest of International Law,* 161 *et seq.;* 1 Hyde, *International Law* (2d edition) 156 *et seq.;* Hershey, J. G., *The Legal Effects of Recognition in International Law,* p. 24; Berdahl, *C. A., The Power of Recognition,* 14 *American Journal of International Law* (1920) 519. See also *Jones* v. *United States,* 137 U.S. 202, 212; *Oetjen* v. *Central Leather Co.,* 246 U.S. 297, 302; *Guaranty Trust Co.* v. *United States,* 304 U.S. 126, 137; *United States* v. *Pink,* 315 U.S. 229, 230.)

Very truly yours,

For the Secretary of State:

(S.) Ernest A. Gross,
The Legal Adviser.

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